



BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS AND RECOMMENDATIONS OF THE MINNESOTA DEPARTMENT OF COMMERCE ENERGY FACILITY PERMITTING STAFF

DOCKET NO. IP-6723/WS-09-360

EFP Staff: Suzanne Lamb Steinhauer.....651-296-2888

In the Matter of Morgan Wind Acquisition Group, LLC's Site Permit for a 31.5 Megawatt Large Wind Energy Conversion System in Redwood and Brown Counties

Issues Addressed: The following are the Department of Commerce, Energy Facility Permitting (EFP) staff's comments on Morgan Wind Acquisition Group, LLC's petition for a permit amendment dated May 18, 2012.

Introduction and Background

On December 22, 2009, The Minnesota Public Utilities Commission (Commission) issued a site permit to Morgan Wind Acquisition Group, LLC (Morgan Wind) to construct the 31.5 Megawatt Morgan Wind Large Wind Energy Conversion System (LWECS) Project (Project) in Redwood and Brown counties.¹

Amendment Request

On May 18, 2012, the Commission received a petition from Morgan Wind to amend its site permit by extending for two years both the time in which to obtain a Power Purchase Agreement (PPA) or some other enforceable mechanism for sale of the electricity and the deadline to begin construction.² Morgan Wind states in its petition that it does not propose any changes to the permit beyond extending the PPA and construction deadlines.

¹ Minnesota Public Utilities Commission Order, January 15, 2008, eDocket ID: [200912-45327-01](#)

² Morgan Wind Acquisition Group, LLC *Petition to Amend the LWECS Site Permit for Morgan Wind Acquisition Group*, May 18, 2012. eDocket Document ID: [20125-74847-02](#)

This document can be made available in alternative formats; i.e. large print or audio tape by calling (651) 296-0391 (Voice). Persons with hearing or speech disabilities may call us through Minnesota Relay at 1-800-627-3529 or by dialing 711.

Regulatory Process and Procedures

Siting of Large Wind Energy Conversion Systems are governed by Minnesota Statutes, §216F. Minnesota Statutes 216F.03 states:

"The legislature declares it to be the policy of the state to site LWECS in an orderly manner compatible with environmental preservation, sustainable development, and the efficient use of resources."

Minnesota Rules, part 7854.1000, subpart 1, directs the Commission to make a final site permit decision based on the record that has been compiled in the matter. Minnesota Rule, part 7854.1000, subpart 3, requires that the Commission determine that:

"...the project is compatible with environmental preservation, sustainable development, and the efficient use of resources, and the applicant has complied with this chapter."

Minnesota Rules, part 7854.1300, subpart 2, states that:

"The Commission may amend a site permit for an LWECS at any time if the commission has good cause to do so."

EFP Staff Analysis and Comments

To EFP staff's knowledge, seven wind projects have petitioned the Commission for permit amendments to allow for additional time to obtain a PPA or other enforceable mechanism and to commence construction. The Commission has granted these petitions in seven cases and denied the petition in the second request for amendment from Kenyon Wind.

EFP staff has no comment on the merits of Morgan Wind's petition.

Because the Commission found in its initial permit decision that the proposed project is compatible with environmental preservation, sustainable development and the efficient use of resources, it would appear that any permit amendment should also meet those standards. To that end, EFP staff focused its analysis on three areas:

- Proposed project changes that would substantially change the findings accompanying the Commission's original permit decision, and potentially change the Commission's determination that the project is compatible with the standards set out in Statute and Rule;
- Compliance with existing permit; and
- Potential permit amendments not requested by the applicant, but consistent with more recently issued permits.

Project Changes

Morgan Wind proposes to extend by two years the period of time by which it must obtain a PPA and commence construction. Beyond the extension, Morgan does not propose any changes to the permit.

Permittee Contact Information

On March 26, 2012, EFP staff contacted Morgan Wind at the address identified on the permit to inform it of the permit requirement to either obtain a PPA and to commence construction within two years of the permit issuance or, advise the Commission of the reasons the permittee has been unable to meet these conditions.³

Morgan Wind filed a letter with the Commission on April 13, 2012, stating that Morgan Wind was in receipt of the letter from the Department and was diligently working on a response.⁴ The contact person and the address on Morgan Wind's letter are different those noted on the Permit.

Environmental Impacts

EFP staff notes that information on the wildlife and rare and unique natural resources in the project record is three years old. There are no comments in the record to indicate that impacts to wildlife would be a significant concern; however, the lack of current natural resource information makes it difficult for EFP staff to comment on potential impacts to wildlife or rare or unique natural resources resulting from the proposed amendment.

Compliance with Existing Permit

Morgan Wind's petition seeks to bring Morgan Wind back into compliance with three permit conditions.

Power Purchase Agreement

Permit Condition III.J.4 requires Morgan Wind to obtain a PPA or other enforceable mechanism for sale of the electricity generated by the Project within two years of the permit issuance.

Morgan Wind asserts that it has been unable to obtain a PPA or other enforceable mechanism because of delays associated with MISO Group 5 studies. EFP staff has no comment on the merits of Morgan Wind's argument.

Failure to Commence Construction

Permit Condition III.K.2., states that:

"If the Permittee has not completed the preconstruction surveys required in paragraph III.D. and commenced construction of the LWECS within two years of the issuance of this Permit, the Permittee must advise the Commission of the reason construction has not commenced."

³ EFP Staff, Letter to Morgan Wind Acquisition Group, March 26, 2012, eDocket ID: [20123-72911-01](#)

⁴ Morgan Wind Acquisition Group, April 13, 2012, eDocket ID: [20124-73602-01](#)

The Permit, at III.J.4., does not authorize construction of the Project without a PPA or other enforceable mechanism; it follows that Morgan Wind must find a purchaser for their power before commencing construction.

Notice to Local Residents

Permit Condition III.K.9. requires the permittee to provide a copy of the permit within 10 days of permit issuance to the auditor of each county within which the site is located, as well as representatives of each city and township within which the Project is located and to provide a copy of the permit to each affected landowner within the site within 30 days of permit issuance.

Morgan Wind did not provide the notice required under this permit condition and was apparently unaware of this requirement until a filing was requested in the Department's letter of March 26, 2012. This oversight does not reflect well on Morgan Wind, and EFP staff does have some concerns that Morgan Wind has not taken the conditions of the permit seriously.

To remedy this oversight Morgan Wind proposes to provide required notice in the event that the Commission grants Morgan's request for amendment. EFP staff believes Morgan Wind's proposed remedy is reasonable. Because Morgan Wind is currently out of compliance with the permit, EFP staff sees no value, and potential for confusion, in sending a permit that is essentially invalid to potentially affected governments and landowners. Should the Commission choose to amend the permit, EFP staff believes Morgan Wind's proposal to provide the required notice after permit amendment is reasonable. Should the Commission refuse the request for permit amendment, the question of notice becomes moot.

Consistency with Recently Issued Permits

Since the issuance of the permit in December 2009, the Commission has made several changes to LWECS permits to clarify filing, complaint and reporting requirements.

Complaint Handling Procedures

The existing permit contains, in Attachment 1, *The Minnesota Public Utilities Commission Complaint Report and Handling Procedures for Large Wind Energy Conversion Systems*. The Commission has since revised these procedures since the issuance of the original permit.

Reporting Requirements

The permit requires Morgan Wind to report to the Commission on the Project's energy production (III.H.1) and wind resource use (III.H.2). Since the issuance of the permit the Commission has made several changes to LWECS permits to clarify and reporting requirements. Recent Commission inquiries for information related to energy production and wind resource data suggest an interest in these reports.

EFP staff notes that the language in these two conditions has changed over time and different permits contain different language. After reviewing permit language related to Energy Production and Wind Resource reporting requirements in several permits issued over the past three years, EFP staff recommends the following changes to Sections III.H.1 and III.H.2 of the permit issued to Morgan Wind:

H. REPORTING

1. PROJECT ENERGY PRODUCTION

~~The Permittee shall, by submit an Energy Production Report to the Commission no later than February 1st following each complete or partial year of project operation~~ submit a report to the Commission including. The report shall include: a) the ~~rated nameplate installed~~ capacity of the permitted LWECs project; b) the total monthly energy generated by the LWECs in Megawatt Hours; c) the monthly capacity factor of the Project; d) yearly energy production and capacity factor for the Project; e) ~~the total energy curtailed in Megawatt Hours~~ the operational status of the Project and any major outages, curtailments, major repairs, or turbine performance improvements occurring the previous year; and f) any other information reasonably requested by the Commission.

This information will be considered public and must be submitted electronically.

2. WIND RESOURCE USE

~~Beginning the first full quarter following the commercial operation of the wind farm, the~~ The Permittee shall, by February 1st following each complete or partial calendar year of operation, file a quarterly report (due January 15, April 15, July 15, and October 15) with the Commission with the following average monthly and average annual wind speed collected at one permanent meteorological tower during the preceding year or partial year of operation. hourly data for each hour of commercial operation in printed format or electronic format capable of computerized analysis as specified by the Commission. That data entails:

- ~~(a) The power output of each turbine;~~
- ~~(b) The wind speed and direction measured at all monitored heights at any temporary and permanent meteorological towers, connected to the SCADA system, owned or operated by the Permittee, in or within three miles of the Project site boundary; and~~
- ~~(c) Temperature and any other meteorological parameters recorded at one permanent meteorological tower selected by the Commission.~~

~~After two years of commercial operation, the Commission may reduce or eliminate the requirements of this condition. The provisions of paragraph III.K.5. shall apply to the Commission's review of this data.~~

This information will be considered public and must be submitted electronically.

EFP staff believes that the proposed language, typical of more recent permits, can provide the Commission with the level of detail that would allow for comparison between projects and over time. The proposed language also allows the Commission to request additional energy production information deemed necessary.

Based on statements by Commissioners in recent wind siting proceedings, there appears to be an interest that compiled data on wind resources is collected at an aggregate level. The proposed permit language requires the Permittee to file wind resource data annually at the same time as the energy production data. Because the wind resource data requested is high level summary data (average annual and monthly wind speeds collected at one met tower within the Project area), EFP staff believes the requested data should be considered public.

Shadow Flicker

The record to date also does not include information on shadow flicker, and the issue of shadow flicker is not addressed in the Commission's permit decision. The Commission has required permittees to provide information on shadow flicker in several recent permit amendments.

SHADOW FLICKER

At least fourteen (14) days prior to the pre-construction meeting, the Permittee shall provide data on shadow flicker exposure on each residence of non-participating landowners and participating landowners. Information shall include the results of modeling used, assumptions made, and the anticipated levels of exposure from turbine shadow flicker on each residence. The Permittee shall provide documentation on its efforts to avoid, minimize and mitigate shadow flicker exposure. The results of any surveys shall be submitted to the Commission at least fourteen (14) days prior to the pre-construction meeting to confirm compliance of conditions in this permit.

Biological Survey

The existing Permit, at III.D.1, requires Morgan Wind to conduct a preconstruction inventory of biologically sensitive areas within the site and assess the presence of state- or federally-listed species prior to construction. More recently issued permits focus the area of the surveys to potentially impacted areas and require the report be provided prior to the preconstruction meeting.

1. BIOLOGICAL PRESERVATION SURVEY AND NATURAL RESOURCE INVENTORIES

The Permittee, in consultation with DNR and the Commission other interested parties, shall conduct a pre-construction desktop and field inventoryies of existing recreation areas, potentially impacted native prairies, wetlands-wildlife management areas, scientific and natural areas, recreation areas, and any other biologically sensitive areas within the site and assess the presence of state threatened, endangered or species of special concern or federally-listed or threatened species. The results of the any surveys shall be submitted to the PUC Commission and DNR at least fourteen (14) days prior to the commencement of construction pre-construction meeting to confirm compliance of conditions in this permit.

The Permittee shall provide to the Commission any biological surveys or studies conducted on the Project, including those not required under this permit.

EFP Staff Recommendations

EFP staff recommends that the Commission:

1. Request Morgan Wind clarify the permit contact and address, and advise the Commission if this information changes in the future.
2. Require Morgan Wind to file updated baseline natural resource information prior to making a final decision on the amendment request. Updated search results from the DNR's Natural

History Information Service database would provide a minimum level of information on any rare and unique natural resources in the area.

In recent comments on the amendment request by Comfrey Wind Energy (CWE), EFP staff noted that the Commission may wish to require CWE to provide the Biological and Natural Resource Inventories prior to making a decision. In the case of the CWE amendment request, CWE appeared to be in the advanced stages of permit development and had apparently settled on a turbine model and layout. Based on the information in Morgan Wind's petition, however, project development regarding turbine selection and layout appears to still be in development and further refinement may be advisable before undertaking these inventories.

3. If the Commission chooses to grant Morgan Wind's petition for permit amendment, EFP staff recommends that the Commission also consider amending the permit to include current complaint procedures, current energy and wind resource reporting requirements, and the condition on shadow flicker from more recent permits. In addition, if the Commission chooses to grant the petition, EFP staff recommends that Morgan Wind be provided with current compliance procedures.